REMARKS:

Claims 1, 19 and 50-53 are amended and claims 6 and 24 are withdrawn from consideration by this amendment. Claims 1-5, 7-9, 19-23, 25-27 and 50-53 will be pending for consideration upon entry of the amendment.

This letter is responsive to the final Office action dated May 14, 2004.

Objections to Specification

The specification is amended herein pursuant to the objections raised in paragraph 4 of the Office action. In particular, the specification is amended to denote that the test set forth in Experiment 1 of the specification at page 20, lines 1-19 define the Flowback Test recited in the claims. The specification is further amended to denote that the samples tested in Experiment 2 of the specification were tested according to the Flowback Test procedures set forth in Experiment 1.

In view of the amendments made to the specification herein, the specification is submitted to be in proper form for allowance.

Objection to Drawings

Applicants respectfully request reconsideration of the objection to the drawings as not showing every feature of the invention specified in the claims. In particular, it is submitted that illustration of the precise materials from which the wetness indicating zone and absorbent zones are constructed is unnecessary. Figure 5 clearly delineates by cross-hatching the fact that the central wetness indicating zone has a

different construction than the absorbent zones. The specification sets forth, in detail, the range of suitable materials for the construction of the absorbent body. For example, at page 23, lines 4-11, the present application discloses that the central wetness indicating zone may comprise wood pulp fluff, or it may comprise other hydrophilic materials. Thus, wood pulp fluff is not the only material from which the central wetness indicating zone may be constructed. For these reasons, the cross-section shown in Fig. 5 of the drawings was cross-hatched only to indicate the different constructions of the central wetness indicating zone and absorbent zones, and not to indicate any one material in particular.

Response to Claim Objections

The claims have been amended to satisfy the objections raised in paragraph 5 of the final Office action.

Response to Claim Language Interpretation

At paragraph 7 of the final Office action, the Office takes the position that the absorbent body recited in claims 1, 19 and 50-53 is limited in scope to the exact absorbent body tested in Experiment 2 of the application. Applicants disagree with such a position. In Experiment 1 of the application, applicants disclose an experiment in which absorbent body test samples having different constructions (some in accordance with constructions of the present invention and others constructed to simulate conventional constructions) were tested according to a Flowback Test procedure to determine the amount of liquid available for flowback after certain time periods following wetting. In Experiment 2 of the application, additional

samples were tested, with some of the samples being constructed in accordance with the embodiment of Fig. 5 of the present invention and other samples constructed in accordance with conventional constructions. Detailed descriptions of the sample construction is provided in Experiment 2. The samples tested in Experiment 2 were tested according to the Flowback Test procedures previously described in Experiment 1 of the application.

Claim 1 as amended herein includes the recitation of an absorbent body comprising a first zone and a second zone, the first zone having a lower absorbent capacity per unit weight than the second zone and facilitating the flow of liquid body waste from the first zone back through the liner for indicating to the wearer the release of liquid body waste into said article, the absorbent body maintaining at least about 20 grams of liquid available for flowback after one minute according to the Flowback Test set forth in the specification.

There are clearly no specific limitations on the size, material, or construction of the first and second zones of the absorbent body recited in claim 1 other than the different absorbent capacities and the ability of the absorbent body to maintain the desired amount of liquid available for flowback after one minute according to the Flowback Test. The absorbent body recited in claim 1 may thus have any of the constructions described in the specification with regard to the embodiment of Fig. 5, as long as the first zone has a lower absorbent capacity per unit weight than the second zone and the absorbent body maintains the desired amount of liquid available for flowback according to the Flowback Test.

The samples tested in Experiment 2 set forth in the specification are but one example of an absorbent body

construction in accordance with the Fig. 5 embodiment, and support the recitation in claim 1 to the desired flowback characteristics. However, the Fig. 5 embodiment is not limited to the lone example that was tested. Rather, with all due respect, the Office is impermissibly reading the limitations prescribed in paragraph 7 of the final Office action into the claim.

Rejection of Claims Under 35 USC §112

Reconsideration of the rejection of claims 2-5, 7-9, 19-23 and 25-27 under 35 USC §112 is respectfully requested in view of the discussion above relating to claim interpretation. As best understood (in view of the Office's statements at paragraph 8, as well as the advisory statement at paragraph 6 of the final Office action), the Office's rejection of the claims is based on its interpretation of the claims as requiring an absorbent body having the precise construction of the sample tested in Experiment 2. Applicants disagree with such a characterization as discussed above and submit that absent such a characterization claims 2-5, 7-9, 19-23 and 25-25 satisfy the requirements of 35 USC §112.

Rejection of Claims Under 35 USC §102

Claim 1

Claim 1 is amended herein and is directed to a disposable absorbent article for personal wear wherein the disposable absorbent article comprises:

a generally liquid permeable liner adapted for contiguity with the wearer's skin;

an outer cover; and

an absorbent body between the liner and the outer cover

for absorbing liquid body waste penetrating the liner, said absorbent body comprising a first zone and a second zone, the first zone having a lower absorbent capacity per unit weight than the second zone and facilitating the flow of liquid body waste from the first zone back through the liner for indicating to the wearer the release of liquid body waste into said article, the absorbent body maintaining at least about 20 grams of liquid available for flowback after one minute according to a Flowback Test.

The essence of amended claim 1 is the particular configuration of the absorbent body to have a first zone having a lower absorbent capacity per unit weight than that of a second zone of the absorbent body. Even more so, the construction of the first and second zones of the absorbent body achieves a flowback after one minute as determined by the Flowback Test described in Experiment 1 of the present application of at least about 20 grams. That is, one minute after insult of the absorbent body, at least about 20 grams of liquid is available for flowback through the liner to facilitate a feeling of wetness to the wearer of the absorbent article.

Claim 1 as amended is submitted to be unanticipated by and patentable over the references of record, and in particular U.S. Patent No. 5,047,023 (Berg), in that whether considered alone or in combination the references fail to show or suggest a disposable absorbent article including an absorbent body constructed to have a first zone of a lesser absorbent capacity per unit weight than a second zone and wherein the absorbent body achieves a flowback after one minute as determined by a

Flowback Test of at least about 20 grams.[1]

Berg discloses an absorbent member having a storage zone and an acquisition zone having a lower density and a lower average basis weight per unit area than the storage zone. The absorbent member is particularly disclosed as being constructed of hydrophilic fibers and particulate absorbent gelling materials having a certain particle mass median particle size an a certain particle size deviation from the mass median particle size. See, e.g., column 14, lines 10-26. Specifically, the particles are of a generally large size, having a mass median size in the range of 400 to 1190 microns, and more particularly greater than or equal to about 841 microns (column 15, lines 9-12).

Berg fails to disclose or otherwise suggest an absorbent body having the flowback characteristics recited in amended claim 1. The Office's lone position is that the flowback characteristics of the absorbent body recited in claim 1 are inherent to the absorbent member disclosed by Berg. To establish inherency, the prior art "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact

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[1] The Office's rejection of claim 1 as being anticipated by Berg conflicts with its earlier claim interpretation. The final Office action fails to set forth any disclosure by Berg of the precise absorbent body constructions (e.g., overall size of the absorbent body, and the relative widths of the first and second zones of the absorbent body) asserted by the Office (it is believed incorrectly) as being required by claim 1. Indeed, Berg contains no such disclosure and, based on the Office's strained claim interpretation, cannot anticipate claim 1 should the Office maintain such an interpretation.

that a certain thing may result from a given set of circumstances is not sufficient." In re Robertson, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999); MPEP §2112.

The absorbent member disclosed by Berg does not necessarily have the flowback characteristics of the absorbent body recited in claim 1 of the present application. To the contrary, Berg instead discloses constructing the absorbent member to provide a dry feeling to the wearer. See, e.g., column 23, lines 45-64. At column 13, lines 56-67, Berg particularly discloses that using the larger gel particles provides unexpected advantages in absorbent capacity, acquisition and distribution. For example, the larger particles maintain a more open capillary structure to enhance planar transport of fluid to the storage zone for absorption by the gel particles in the storage zone (column 16, lines 58-63). Thus, it is readily apparent that the absorbent member of Berg is constructed to avoid flowback (e.g., to quickly move the liquid to the storage zone of the absorbent member), and not to facilitate flowback in the manner of the absorbent body recited in claim 1. Thus, the absorbent member disclosed by Berg does not necessarily have the flowback characteristics recited in amended claim 1 (and indeed it is more likely that it does not).

At paragraph 12 of the final Office action, the Office relies on the disclosure by Berg at column 2, lines 50-53 for support. Specifically, Berg discloses that the absorbent member construction is such that the acquisition zone of the absorbent member quickly acquires and temporarily holds discharged liquids. However, there is no disclosure by Berg as to how much liquid is temporarily held, and for how long. What Berg does disclose, as discussed above, is that the absorbent

member is constructed to quickly transport liquid away from the acquisition zone to the storage zone. Thus, the idea is to quickly reduce the amount of liquid that remains in the acquisition zone.

The Office further cites the paragraph bridging columns 16 and 17 of Berg as support. However, this paragraph particularly notes the importance of maintaining an open capillary structure when the acquisition zone is wetted "to enhance planar transport of liquids away from the acquisition zone to the rest of the absorbent member." Column 16, lines 58-63. This statement belies the Office's position and instead appears to suggest the contrary, i.e., that the absorbent member of Berg is unlikely to have the flowback characteristics of the absorbent body recited in claim 1 of the present invention.

It is also unclear how the remaining passage cited by the Office, column 20, lines 18-31, supports its position that the recited flowback characteristics are inherent in the absorbent body of Berg. This cited passage merely teaches that the acquisition zone cannot be empty, i.e., some material must be located at the acquisition zone, otherwise liquid tends to pool on the topsheet.

Finally, the Office notes that the present application does not teach superabsorbent particle sizes other than those disclosed in Berg. Applicants submit that this is a non-issue. The present application clearly sets forth an embodiment which achieves the recited flowback characteristics. Rather, the only issue relevant to the Office's assertion of inherency is whether the absorbent member disclosed by Berg necessarily has the same recited flowback characteristics. As discussed above, it does not.

For these reasons, claim 1 is submitted to be unanticipated by and patentable over Berg and the other references of record.

Claims 3-9 and new claims 50 and 51 depend directly from claim 1 and are submitted to patentable over the references of record for the same reasons as claim 1.

Claims 50 and 51

Claim 50, depending directly from claim 1, further recites that the absorbent body maintains at least about 10 grams of liquid available for flowback after five minutes according to the Flowback Test. Claim 51 also depends directly from claim 1 and further recites that the absorbent body maintains at least 5 grams of liquid available for flowback after ten minutes according to the Flowback Test.

Berg further fails to disclose or suggest a flowback after five minutes or after ten minutes. For reasons similar to those set forth above in connection with the patentability of amended claim 1, it is submitted that the flowback characteristics of the absorbent body recited in new claims 50 and 51 are also not inherent in the absorbent member disclosed by Berg.

For these additional reasons, new claims 50 and 51 are submitted to be patentable over Berg and the other references of record.

Claim 19

Claim 19 as amended herein is directed to a pair of toilet training pants comprising, *inter alia*, an absorbent body between a liner and an outer cover for absorbing liquid body waste penetrating the liner. The absorbent body comprises a first zone and a second zone wherein the first zone has a lower absorbent capacity per unit weight than the second zone and is capable of facilitating the flow of liquid body waste from the first zone back through the liner for indicating to the wearer the release of liquid body waste into the training pants. The absorbent body maintains at least about 20 grams of liquid available for flowback after one minute according to a Flowback Test.

Claim 19 includes the recitation of an absorbent body having the same flowback characteristics recited in claim 1 (the patentability of which is discussed above). For these reasons, amended claim 19 is submitted to be patentable over the references of record, and in particular Berg, for at least the same reasons as claim 1.

Claims 20-27 depend directly or indirectly from claim 19 and are submitted to be patentable over the references of record for the same reasons as claim 19.

Claim 52

Claim 52 is directed to a disposable absorbent article for personal wear. The article comprises, *inter alia*:

a generally liquid permeable liner . . .;

an outer cover; and

an absorbent body between the liner and the outer cover . . ., said absorbent body comprising a first zone and a second zone, the first zone having a lower absorbent capacity per unit

weight than the second zone and facilitating the flow of liquid body waste from the first zone back through the liner for indicating to the wearer the release of liquid body waste into said article, the absorbent body maintaining at least about 10 grams of liquid available for flowback after five minutes according to a Flowback Test.

Claim 52 is submitted to be patentable over the references of record, and in particular U.S. Patent No. 5,047,023 (Berg), for reasons similar to that discussed above in connection with amended claim 1. That is, whether considered alone or in combination, the references fail to show or suggest a disposable absorbent article including an absorbent body constructed to have a first zone of a lesser absorbent capacity per unit weight than a second zone and wherein the absorbent body maintains at least about 10 grams of liquid available for flowback after five minutes as determined by the Flowback Test. In particular, it is submitted that the flowback characteristics of the absorbent body recited in claim 52 are not inherent in the absorbent member disclosed in Berg for the same reasons as claim 1.

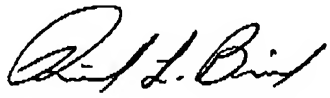
Claim 53

Claim 53 is substantially similar to claim 52 with the exception that claim 53 recites the absorbent body as maintaining at least about 5 grams of liquid available for flowback after ten minutes according to the Flowback Test. Claim 53 is submitted to be patentable over Berg and the other references of record for substantially the same reasons as set forth above in connection with amended claim 1 and claim 52.

Conclusion

In view of the above, favorable consideration and allowance of claims 1-5, 7-9, 19-23, 25-27 and 50-53 as now presented is respectfully requested.

Respectfully submitted,



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